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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File:



Office: Vermont Service Center

Date: MAY 16 2002

IN RE: Applicant:



Application: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The applicant is a native of China and a citizen of the Republic of China who indicated on her application that she entered the United States on April 9, 1998, as a B-2 visitor. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254, because the applicant failed to establish that she was a national of Honduras.

The record reflects that the applicant was admitted to the United States as a B-2 visitor on April 9, 1998, by presenting her passport from the Republic of China. The applicant was authorized to remain until October 8, 1998.

On motion, the applicant asserts the Service erroneously believes that she is a citizen of Taiwan because her application indicates her country of citizenship as "TWN." The applicant claims that her application was prepared by an acquaintance who inadvertently indicated she was a citizen of Taiwan because her passport was issued by the Republic of China. The applicant states she has no nationality and had resided in Honduras since 1993. The applicant provides a copy of her Honduras Alien Registration Card. She also provides a copy of her passport which was issued to her on January 6, 1998 at the Republic of China Embassy in Honduras.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be proved at the reopened proceeding; and be supported by affidavits or other documentary evidence.

8 C.F.R. 103.5(a)(4) states a motion that does not meet applicable requirements shall be dismissed.

8 C.F.R. 103.5(a)(3) states, in pertinent part:

A motion for reconsideration must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Section 101(a)(30) of the Act defines passport as any travel document issued by competent authority showing the bearer's origin, identity, and nationality, which is valid for the entry of the bearer into a foreign country.

In Matter of Ognibene, 18 I&N Dec. 425 (Reg. Comm, 1983), it was held that in the case of a dual national alien nonimmigrant, the nationality claimed or established by him\her at the time of

his\her entry into the United States must be regarded as his\her sole or operative nationality for the duration of his\her temporary stay in the United States.

The applicant was admitted to the United States as a citizen of the Republic of China. Citizens of the Republic of China are not eligible for temporary protected status. As such, the issue on which the underlying decision was based has not been overcome on motion.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met, as the petitioner has not provided any new facts or additional evidence to overcome the previous decision of the Associate Commissioner. Accordingly, the previous decision of the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated March 16, 2001 is affirmed. The motion is dismissed.